

APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. §41.37
U.S. Application Serial No. 09/766,407
Attorney Docket No. 062070-0311757

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In re PATENT APPLICATION of: Confirmation Number: 7309
Ronald Martin Tanner et al.

Application No.: 09/766,407 Group Art Unit: 2173

Filed: January 22, 2001 Examiner: BASOM, Blaine

Title: METHOD AND SYSTEM FOR GENERATING DYNAMIC IMAGES

APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. §41.37

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Further to the Notice of Appeal filed on December 14, 2005 and the Notice of Panel Decision from Pre-Appeal Brief Review dated January 24, 2006, Appellants respectfully submit a complete new Appeal Brief pursuant to 37 C.F.R. §41.37.

Appellants have filed concurrently herewith a petition for a one month extension of time. 37 C.F.R. §1.17(a)(1). The Director is authorized to charge \$620.00 to cover the \$120.00 petition fee, as well as the \$500.00 fee for filing an Appeal Brief pursuant to 37 C.F.R. §41.20(b)(2). The Director is further authorized to charge any additional fees that may be due, or credit any overpayment of same to Deposit Account No. 033975 (Ref. No. 062070-0311757).

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APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. §41.37
U.S. Application Serial No. 09/766,407
Attorney Docket No. 062070-0311757

1) REQUIREMENTS OF 37 C.F.R. §41.37

I. 37 C.F.R. § 41.37(c)(1)(i) – REAL PARTY IN INTEREST

The real party in interest is Novell Incorporated.

II. 37 C.F.R. § 41.37(c)(1)(ii) RELATED APPEALS AND INTERFERENCES

Appellants are aware of no related appeals or interferences.

III. 37 C.F.R. § 41.37(c)(1)(iii) STATUS OF CLAIMS

Pending: Claims 1-11, 13-23 and 25-27 are pending.

Cancelled: Claims 12 and 24 are cancelled.

Rejected: Claims 1-11, 13-23 and 25-27 stand rejected.

Allowed: No claims have been allowed.

On Appeal: The rejections of claims 1-11, 13-23 and 25-27 under 35 U.S.C. § 102(e) are appealed.

IV. 37 C.F.R. § 41.37(c)(1)(iv) STATUS OF AMENDMENTS

No amendments have been filed subsequent to the Reply to Final Office Action filed on October 14, 2005.

V. 37 C.F.R. § 41.37(c)(1)(v) SUMMARY OF CLAIMED SUBJECT MATTER

The present invention relates to a system and method for imaging a workstation.

The system may include at least one workstation 130, an image server 110 and a directory

APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. §41.37
U.S. Application Serial No. 09/766,407
Attorney Docket No. 062070-0311757

120. When a workstation 130 (or other device) is booted, the image server may determine an image that is to be loaded onto the workstation 130. The determination may be made pursuant to certain policies and/or rules. The directory 120 may maintain one or more images as directory objects. See Specification, e.g., Figure 1 and pg. 4-5. These objects can be used on multiple workstations, as needed.

A connection 112 between the image server 110 and directory 120 may be made in order for the image server 110 to receive information for associated policies related to the deployment of images. Connection 114 may be used when a workstation 130 is first activated (e.g., boot-time). During a normal boot process the workstation 130 connects to the image server 110 to request an image and other information for the workstation 130. The workstation 130 may send to the image server 110 information concerning hardware particulars of the workstation 130 in order to assist the image server 110 in determining an image for the workstation 130. If a workstation object associated with the workstation 130 is located in the directory 120, the image server 110 determines which image is to be placed (e.g., downloaded) on the workstation 130. If there is no workstation object in the directory 120, then image server 110 may follow rules specified in one or more associated policies and determine from those rules or criteria which image to place on the workstation 130. The rules may be based on hardware (or other) characteristics of the device. Based on the rules, the image can be determined and the image may be transmitted over connection 114 to workstation 130 to place the identified image on the hard drive or other destination. See Specification, e.g., Figure 1 and pg. 4, line 6- pg. 5, line 9.

APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. §41.37
U.S. Application Serial No. 09/766,407
Attorney Docket No. 062070-0311757

Another important aspect of at least one embodiment of the invention relates to associating a basic image with a set of files corresponding to one or more additional images. This approach enables a number of base images and a wide variety of additional images to be stored and combined as needed when a workstation is booted, without having to store each of the specific potential combinations of base image and additional images. The additional images may be application images, among other additional images. *See Specification, e.g., Abstract; fig. 1; pg. 3 line 19-pg. 4, line 5.* The determination of which additional images are to be associated with the selected base image may be based on one or more preselected criteria (e.g., rules).

According to one embodiment, the base image may be determined, at least in part, based on preselected criteria such as hardware information obtained from the device (e.g., workstation 130). The hardware information may include one or more of device type, storage device size, amount of random access memory (e.g., 500 MB hard disk) or other information. *See Specification, e.g., pg. 4 lines 15-17; pg. 5 lines 17-19; pg. 8 lines 14-19.*

An imaging server policy (including various rules) may be applied to the device 130 based on the hardware information obtained from the device. For example, once an imaging server 110 receives the hardware information (or other information), it may check with directory services in directory 120 for a rules or criteria associated with the received hardware information (or other information) to determine an appropriate image for the device. For example, the result of applying a rule may result in selection of an image object suitable for the device, based on the type of device hardware. *See Specification, e.g., pg. 8 lines 14-19.*

APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. §41.37
U.S. Application Serial No. 09/766,407
Attorney Docket No. 062070-0311757

Imaging server policy may be stored as an imaging server policy object in the directory 120 to allow an administrator (or other entity) to configure rules that include logic related various hardware or other information. *See Specification, e.g., pg. 5 lines 1-3 and lines 16-19.*

A representation of the at least one image of the device may be placed into the directory 120. For example, an administrator may associate specific policies and/or images directly with the device object in the directory 120. Other information may also be associated with the device object. *See Specification e.g., pg. 9 lines 8-16 and Fig. 2a.*

According to an embodiment of the invention, one or more additional images may be associated with the at least one image. For example, when the image is placed on the workstation 130, additional "add-on" images may be automatically placed onto the workstation and presented to the user as if there were a single image placed on the workstation. *See Specification, e.g., pg. 14, line 20- pg. 14, line 6; fig. 2a and fig. 6.*

According to an embodiment of the invention, at least one customized image may be created (e.g., to be stored in the device 130), wherein the at least one custom image comprises the at least one base image portion and one or more additional image portions. Image server 110 may create the customized image. *See Specification pg. 14 lines 7-14 and fig. 6. The customized image may be placed on the device 130. For example, a connection 112 between the image server 110 and device 130 may allow the customized*

APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. §41.37
U.S. Application Serial No. 09/766,407
Attorney Docket No. 062070-0311757

image to be placed onto the device to be stored in memory of the device. *See* Specification, e.g., pg. 4 lines 6-10.

According to an embodiment of the invention, one or more file sets may be defined to include selected ones of a plurality of files and one or more files sets may be inserted in the at least one image. For example, file sets may be groupings of files that currently exist in the image. Through an image explorer or other mechanism, the administrator may define the file set that each file may be associated with. *See* Specification, e.g., pg. 15, line 16-pg. 16, line 7.

According to an embodiment of the invention, a base image may be created and additional images may be associated with the base so that the customized image may be updated to comprise the base image of the device, at least one image of the device and one or more addition image. For example, the administrator may set up a workstation to hold a "golden" copy of the desired workstation for business or other application. This "golden" image workstation may have any operating system and any one or more software packages that the administrator may desire to have in a base image of the workstation or the device 130. Additional add-on images may be applied to the base image when the image is applied to the workstation 130, for example. Therefore, it may be advantageous for the administrator to develop a base image of a workstation (or other device) with minimum or no applications that may be added with add-on images to enable upgrades of images to be done by simply changing the applications add-on images, keeping the administrator from having to retake another "golden" image. *See* Specification e.g., pg. 10, line 14- pg. 11, line 2.

APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. §41.37
U.S. Application Serial No. 09/766,407
Attorney Docket No. 062070-0311757

**VI. 37 C.F.R. § 41.37(c)(1)(vi) Grounds of Rejection to be Reviewed on Appeal
(35 U.S.C. § 102).**

Claims 1-11, 13-23 and 25-27 stand rejected under 35 U.S.C. §102(e) as allegedly being anticipated by Traversat *et al.* (U.S. Patent No. 6,052,720), hereinafter "Traversat." See Final Office Action ("Final Action") mailed July 14, 2006 on pg. 3.

VII. 37 C.F.R. § 41.37(c)(1)(vi) ARGUMENT

A. Claims 1-11, 13-23, and 25-27 are Patentable over Traversat.¹

The Examiner legally erred in rejecting claims 1-11, 13-23 and 25-27 under 35 U.S.C. §102(e) as being anticipated over Traversat for at least the reason that Traversat neither explicitly nor inherently discloses each of the elements of claims 1-11, 13-23, and 25-27. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d (BNA) 1051, 1053 (Fed. Cir. 1987).

1. Independent claims 1 and 13

Independent claim 1 recites, among other things, the claim element of, "creating at least one customized image, wherein the at least one customized image comprises the at least one image of the device and the one or more additional images; and placing the at least one customized image on the device." Claim 13 recites a similar feature.

¹ The groups of claims addressed separately by sub-heading do not stand or fall together.

APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. §41.37
U.S. Application Serial No. 09/766,407
Attorney Docket No. 062070-0311757

Traversat fails to disclose at least this feature. In the Final Action the Examiner alleges that configuration information is the same as the claimed "image." See Final Action pg 3-4. With this interpretation the Examiner further alleges that:

Traversat teaches a plurality of means to customize this image to form a customized image, which is then placed on the client computer. For example, the configuration information for the particular client computer may be overridden or augmented by configuration information maintained by a "profile category," a "user category," and a group category," of the server schema, whereby these categories respectively store configuration information for particular uses of the client computer, particular users of the computer and particular groups of users of the computer (see column 9, lines 11-67, in addition to column 10, line 29- column 11, line 67).

See Final Action at pg. 4.

The Examiner fails to provide support to establish that configuration information is the same as the claimed image. Even if configuration information for the particular client computer could be considered as an image of the device, which is not conceded, Traversat still fails to disclose "wherein the at least one *customized image comprises the at least one image of the device and the one or more additional images*," as claimed. Rather, as the Examiner states, configuration information for the particular client computer is overridden. Also, there is no mention in Traversat of augmented configuration information. In fact, Traversat discloses the following:

In the described embodiment, data regarding the platform of the computer is overridden by data in the computer-specific profile if there is one for that computer. At step 619 the client populates its software namespace 209 within its client schema 103 with the coalesced data entry from the server. See Traversat, col. 11 lines 16-21.

In the described embodiment, the user configuration entry sent to the client at step 627 overrides any corresponding data that was sent at step 619. See Traversat, col. 11 lines 47-49.

At step 805 the values in the profile entry and the platform entry are coalesced. Values for properties that are contained in both entries are coalesced on a property-by-property basis according to a hierarchy shown in FIG. 8b. In the described embodiment, values in the profile entry that

APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. §41.37
U.S. Application Serial No. 09/766,407
Attorney Docket No. 062070-0311757

have a matching property value in the platform entry are overridden by the profile entry values. See *Traversat*, col. 12 lines 31-37.

At step 813 the server overrides values in the profile/platform entry from step 805 with values in the coalesced user entry. See *Traversat*, col. 12 lines 46-48.

According to *Traversat*, configuration information for a device type (e.g., platform data) is overridden by other configuration information from a higher ranking category (e.g., profile, user, group) in order to create a final data set to be sent to the client. As such, the configuration information for the device is not included in the final data set because it is overridden by other data. Therefore, *Traversat* does not disclose a customized image *comprising at least one image of the device and the one or more additional images*, because the at least one image of the device is overridden by other information.

For at least these reasons, *Traversat* fails to disclose each and every claim feature as required in an anticipation rejection under 35 U.S.C. §102(e). The rejection of independent claims 1 and 13 should be reversed. Appellants submit that dependent claims 2-5, 9-11, 14-17, 21-23, 25 and 26 are allowable for at least the reason that they depend from allowable independent claims, for the reasons set forth above, as well as for the further limitations they contain.

2. Dependent claims 6 and 18

Claim 6 recites “**creating a base image of the device; associating the at least one image of the device and the one or more additional images to the base image; and updating the customized image to comprise the base image of the device, the at least one image of the device, and the one or more additional images.**” Claim 18 recites similar features.

Traversat fails to disclose at least these features. The Examiner’s Final Action further alleges, without support, that the configuration information maintained by the

APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. §41.37
U.S. Application Serial No. 09/766,407
Attorney Docket No. 062070-0311757

profile category of the server schema is a “base image,” as claimed. *See* Final Action at pg. 6. Even with this interpretation of base image, Traversat does not show “updating the customized image to *comprise the base image* of the device, the *at least one image* of the device *and the one or more additional image*.” Rather, Traversat discloses overriding configuration information from the platform (device) category and profile category with configuration information from other categories. For example, Traversat states:

At step 807 the server retrieves a user entry from the users namespace in the server schema. At step 809 the server determines whether the user who logged on belongs to any of the groups 319. At step 811 the server retrieves a group entry but overrides, again on a property-by-property basis, values in the group entry with values in the users entry. At step 813 the server overrides values in the profile/platform entry from step 805 with values in the coalesced user entry. See Traversat, col. 12 lines 41-48.

Therefore, even if configuration information from the profile category were a base image, which has not been established, Traversat would not disclose a customized image that comprises the base image because the configuration information from the profile category (and configuration information from the platform configuration) are overridden by configuration information from the user entry. For at least these reasons, Traversat fails to disclose each and every claim feature as required in an anticipation rejection under 35 U.S.C. §102(e). The rejection of dependent claims 6 and 18 should be reversed.

3. Dependent claims 7 and 19

Claim 7 recites “the step of customizing the at least one image further comprises defining one or more file sets, wherein the file sets are inserted into a corresponding one of the at least one image.” Claim 19 recites similar features.

Traversat does not disclose these features. The Final Action alleges, without support, that “configuration information maintained in each server schema category is

APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. §41.37
U.S. Application Serial No. 09/766,407
Attorney Docket No. 062070-0311757

understood to be maintained in a file set, as the categories enable the server to distinguish one unit of configuration information from another." *See* Final Action at pg. 7, ¶1. The Final Action fails to provide any evidence to support such allegations that Traversat discloses the features of claim 7 and 19. Even if configuration information could be interpreted to be a file set, which is not conceded, Traversat still fails to disclose "wherein the file sets are *inserted* into a corresponding one of the at least one image." Rather, Traversat discloses overriding configuration information, not inserting it into an image. *See* Traversat, e.g., col. 12 lines 16-48. For at least these reasons, Traversat fails to disclose each and every claim feature as required in an anticipation rejection under 35 U.S.C. §102(e). The rejection of independent claims 7 and 19 should be reversed.

4. Dependent claims 8 and 20

Claim 8 recites "creating one or more application images; defining one or more user characteristics; associating the one or more application images to the one or more user characteristics; and inserting the one or more application images into corresponding ones of the at least one image." Claim 20 recites similar features.

Traversat does not disclose these features. The Final Action alleges, without support, that "profile category, user category, and group category therefore comprise application images associated with one or more user characteristics." *See* Final Action at pg. 7 ¶2. Traversat, further fails to disclose "inserting the one or more application images into corresponding ones of the at least one image." Rather, Traversat discloses overriding, not inserting, configuration information according to a predetermined hierarchy. *See* Traversat, e.g., col. 12, lines 16-22; fig. 8a and 8b. Overriding information is not the same as inserting it. For at least these reasons, Traversat fails to disclose each and every claim

APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. §41.37
U.S. Application Serial No. 09/766,407
Attorney Docket No. 062070-0311757

feature as required in an anticipation rejection under 35 U.S.C. §102(e). The rejection of independent claims 8 and 20 should be reversed.

5. Independent claim 27

Independent claim 27 recites, among other things the claim element of, “at least one image includes a plurality of files...defining one or more file sets to include selected ones of the plurality of files...identifying...the one or more file sets to be inserted in the at least one image.”

Traversat fails to disclose at least these features. In the Final Action, with respect to claim 27, the Examiner alleges that configuration information is the same as the claimed “image” and that configuration information is understood to be maintained in a “file set.”

See Final Action, pg 9. For example, the Examiner states:

This configuration information maintained in each server schema category is understood to be maintained in a file set, as the categories enable the server to distinguish one unit of configuration information from another. Therefore, customizing the image comprises the step of defining one or more file sets wherein the file sets are inserted into the image. See Final Action, pg. 9.

The Final Action fails to provide any support for such allegations. There is no evidence that Traversat teaches “defining one or more file sets...identifying...one or more file sets to be *inserted* in the at least one image.” Furthermore, the Examiner’s Final Action fails to even address the claim feature of “*selected ones of the plurality files*.”

In addition, Traversat discloses coalescing configuration information wherein platform configuration data for a computer type is overridden by other configuration information. No file sets are inserted into the configuration information; rather configuration information is overridden according to a predetermined hierarchy. See

APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. §41.37
U.S. Application Serial No. 09/766,407
Attorney Docket No. 062070-0311757

Traversat, e.g., col. 12, lines 16-22; fig. 8a and 8b. Overriding configuration information is not the same as inserting configuration information.

For at least these reasons, the rejection of independent claim 27 under 35 U.S.C. §102(e) should be reversed.

VIII. 37 C.F.R. §41.37(c)(1)(viii) - CLAIMS APPENDIX

Appendix A: The pending claims (claims 1-11, 13-23 and 25-27) are attached in Appendix A.

IX. 37 C.F.R. §41.37(c)(1)(ix) - EVIDENCE APPENDIX

Appendix B: (None)

X. 37 C.F.R. §41.37(c)(1)(x) - RELATED PROCEEDINGS INDEX

Appendix C: (None)

APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. §41.37
U.S. Application Serial No. 09/766,407
Attorney Docket No. 062070-0311757

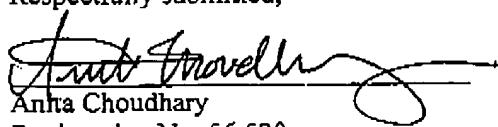
CONCLUSION

For at least the foregoing reasons, Appellant respectfully requests that the rejection of each of the pending claims be reversed.

Date: March 24, 2006

Respectfully submitted,

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APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. §41.37
U.S. Application Serial No. 09/766,407
Attorney Docket No. 062070-0311757

APPENDIX A

1. (*Previously Presented*) A method of placing at least one image on a device and associating one or more additional images to the image based on preselected criteria, the method comprising the steps of:

obtaining hardware information from the device, wherein the hardware information includes at least one of device type, storage device size, and amount of random access memory;

applying an imaging server policy, wherein the imaging server policy comprises at least one rule that is applied to the device based on the hardware information;

identifying, based on the at least one rule, the at least one image that is to be placed on the device;

placing a representation of the at least one image of the device into a directory;

associating the one or more additional images to the at least one image;

creating at least one customized image, wherein the at least one customized image comprises the at least one image of the device and the one or more additional images; and

placing the at least one customized image on the device.

2. (*Previously Presented*) The method of claim 1 further comprising the step of creating a device object to represent the device in the directory.

3. (*Original*) The method of claim 2 wherein at least one policy is associated with the device object.

4. (*Previously Presented*) The method of claim 2, wherein the at least one image is associated with the device object.

5. (*Previously Presented*) The method of claim 1 further comprising the step of creating at least one object in the directory and associating the at least one image of the device with the at least one object.

6. (*Previously Presented*) The method of claim 1, further comprising:

APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. §41.37
U.S. Application Serial No. 09/766,407
Attorney Docket No. 062070-0311757

creating a base image of the device;
associating the at least one image of the device and the one or more additional images to the base image; and
updating the customized image to comprise the base image of the device, the at least one image of the device, and the one or more additional images.

7. *(Previously Presented)* The method of claim 1, wherein the step of customizing the at least one image further comprises defining one or more file sets, wherein the file sets are inserted into a corresponding one of the at least one image.

8. *(Previously Presented)* The method of claim 1, further comprising:
creating one or more application images;
defining one or more user characteristics;
associating the one or more application images to the one or more user characteristics;
and
inserting the one or more application images into corresponding ones of the at least one image.

9. *(Original)* The method of claim 1 wherein the device comprises a workstation.

10. *(Previously Presented)* The method of claim 5, wherein the step of associating the at least one image of the device with at least one object in the directory comprises establishing at least one relationship with at least one policy in the directory.

11. *(Previously Presented)* The method of claim 2 further comprising creating an image object and directly associating the image object with the device object, wherein at least one specified image is applied to the device regardless of the at least one rule specified in the imaging server policy.

12. *Cancelled*

APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. §41.37
U.S. Application Serial No. 09/766,407
Attorney Docket No. 062070-0311757

13. (*Previously Presented*) A system for placing at least one image on a device and associating one or more additional images to the image based on a preselected criteria, the system comprising:

hardware information gathering means for obtaining hardware information from the device, wherein the hardware information includes at least one of device type, storage device size, and amount of random access memory;

storage means for storing an imaging server policy wherein the imaging server policy comprises at least one rule that is applied to the device based on the hardware information;

creating means for creating, based on the at least one rule, the at least one image to be placed on the device;

placement means for placing a representation of the at least one image of the device into a directory;

associating means for associating the one or more additional images to the at least one image;

customization means for creating at least one customized image, wherein the at least one customized image comprises the at least one image of the device and the one or more additional images; and

device placement means for placing the at least one customized image on the device.

14. (*Previously Presented*) The system of claim 13, further comprising a device object that represents the device in the directory.

15. (*Original*) The system of claim 14 wherein at least one policy is associated with the device object.

16. (*Previously Presented*) The system of claim 14 wherein the at least one image is associated with the device object.

17. (*Previously Presented*) The system of claim 13 further comprising object creating

APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. §41.37
U.S. Application Serial No. 09/766,407
Attorney Docket No. 062070-0311757

means for creating at least one object in the directory and association means for associating the at least one image of the device with the at least one object in the directory.

18. (*Previously Presented*) The system of claim 13, further comprising:
base image creating means for creating a base image of the device;
base image associating means for associating the at least one image of the device and the one or more additional images to the base image; and
updating means for updating the at least one customized image to comprise the base image of the device, the at least one image of the device, and the one or more additional images.

19. (*Previously Presented*) The system of claim 13, wherein the customization means further comprises definition means for defining one or more file sets and wherein the one or more file sets are inserted into a corresponding one of the at least one image.

20. (*Previously Presented*) The system of claim 13, further comprising:
application image creating means for creating one or more application images;
user characteristic defining means for defining one or more user characteristics;
user characteristic associating means for associating the one or more application images to the one or more user characteristics; and
inserting means for inserting the one or more application images into corresponding ones of the at least one image.

21. (*Original*) The system of claim 13 wherein the device comprises a workstation.

22. (*Original*) The system of claim 17 wherein the association means comprises establishing means for establishing at least one relationship with at least one policy in the directory.

23. (*Previously Presented*) The system of claim 14 further comprising image object creating means for creating an image object and direct association means for directly associating

APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. §41.37
U.S. Application Serial No. 09/766,407
Attorney Docket No. 062070-0311757

the image object with the device object, wherein at least one specified image is applied to the device regardless of the at least one rule specified in the image server policy.

24. *Cancelled*

25. (*Previously Presented*) The method of claim 1, wherein the hardware information is obtained from the device during a boot process and the customized image is placed on the device during the boot process.

26. (*Previously Presented*) The system of claim 13, wherein the hardware information gathering means obtains the hardware information from the device during a boot process and the device placement means places the customized image on the device during the boot process.

27. (*Previously Presented*) A method of dynamically customizing at least one image that is placed on a device, wherein the at least one image includes a plurality of files, the method comprising the steps of:

obtaining hardware information from the device, wherein the hardware information includes at least one of device type, storage device size, and amount of random access memory;

defining one or more file sets to include selected ones of the plurality of files;

applying an imaging server policy, wherein the imaging server policy comprises at least one rule that is applied to the device based on the hardware information;

identifying, based on the at least one rule, the at least one image that is to be placed on the device;

identifying, based on the at least one rule, the one or more file sets to be inserted in the at least one image;

placing a representation of the at least one image of the device into a directory; and

placing the at least one image on the device.

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U.S. Application Serial No. 09/766,407
Attorney Docket No. 062070-0311757

APPENDIX B

NONE

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APPENDIX C

NONE

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